



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF STATE COUNSEL
LITIGATION BUREAU

March 29, 2023

BY ECF

Honorable Nicholas G. Garaufis
United States District Judge
United States Courthouse
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Idiakheua v. DOCCS, et al.*, 20 Civ. 4169 (NGG) (SJB)

Dear Judge Garaufis:

This Office represents the Defendants in the above-referenced action. Defendants' motion for summary judgment is to be filed on Tuesday, April 2, 2023. I write to respectfully request a two week extension from April 4, 2023 to April 18, 2023 to respond to Plaintiff's opposition paper to Defendants' Motion for Summary Judgment.

Plaintiff has served a 61 page "Supplemental Statement of Facts," containing 393 paragraphs. Defendants' contend that the "Supplemental Statement of Facts" is improper. Local Rule 56.1 provides that "if necessary, [Plaintiff should provide] additional paragraphs containing a separate, short and concise statement of additional material facts as to which it is contended that there exists a genuine issue to be tried." Here, Plaintiff has used the Supplemental Statement of Facts as a work around the 25 page limitation for Memorandum of Law in Opposition to the Motion. See Plaintiff's Memorandum of Law, p.2, n.1 ("Ms. Idiakheua refers the Court to her Local Rule 56.1 Counter Statement¹ for a complete statement of the relevant facts."). Indeed, some of the additional paragraphs provide historical or medical context relating to Mr. Suarez that are not in dispute or material to the claims at issue here and in some cases summarize the deposition testimony given by the defendants, that fail to create a triable issue of fact. Finally, many of the paragraphs include impermissible arguments and take statements made by the defendants out of context. Thus, additional time is needed to thoroughly respond to the Supplemental Statement of Facts. This is Defendants' first request for a modification of the briefing schedule.

¹ Notably in the footnote Plaintiff identifies the Supplemental Statement of Facts as a Counter-Statement, but has titled it a "Supplemental Statement of Facts."

Wherefore, Defendants respectfully request a two week extension to reply to Plaintiff's opposition papers. Defendants are requesting two weeks, as next week includes Holy Thursday and Good Friday and I will be out of the office for the religious holiday. I have spoken to Plaintiff's counsel and while they do not consent to the application, counsel has represented that they take no position.

Accordingly, Defendants respectfully request that the time to serve a reply to Plaintiff's opposition be extended to Tuesday, April 18, 2023, at which time all papers will also be filed.

Respectfully submitted,

Rebecca Ann Durden

Rebecca Ann Durden
Assistant Attorney General
Rebecca.Durden@ag.ny.gov